

CENTER for JUDICIAL ACCOUNTABILITY, INC.*

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July 8, 2016

TO: The 56 County Governments of New York State whose Judicially-Linked District Attorney Salaries are Paid from their County Budgets

ATT: County Boards of Supervisors & Boards of Legislators
County Executive Officers & Treasurers/Comptrollers
County Attorneys

FROM: Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)

RE: **GIVING NOTICE**: Your duty to repudiate & challenge the state-imposed district attorney salary increases based on your own district attorney's findings of fact and conclusions of law with respect to rock-solid, *prima facie* evidence establishing them to be based on judicial salary increases that are statutorily-violative, fraudulent – & unconstitutional

As you know, most of New York State's 62 counties do not set the salaries of their full-time county-elected district attorneys. Rather, their salaries are set by the state, which has linked them to judicial salaries (Judiciary Law §183-a). On the whole, this has not affected the pocket-books of county taxpayers because the state subsidizes district attorney salary costs that county taxpayers would otherwise bear (County Law §700.10, §700.11). However, this year the state is not picking up the tab for the sizable increases in district attorney salaries for which the counties are liable. These are the increases resulting from the judicial salary increases recommended by the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation. Indeed, notwithstanding the advocacy of the New York State Association of Counties (NYSAC) and the District Attorneys Association of the State of New York (DAASNY), no bill was passed by the Legislature to pick up the tab.

Should the counties count on the Legislature passing a bill to cover the increases to district attorney salaries for this year – and the further increases in each of the next three years? Absolutely not. The Legislature's leadership and a significant swath of its rank-and-file have the rock-solid evidence that the December 24, 2015 report is a "false instrument", violative of a succession of penal law provisions. As a matter of fact, the Legislature, Governor Cuomo, Attorney General Schneiderman, and Comptroller DiNapoli are all defendants in a citizen-taxpayer action, suing them for "grand larceny of the public fisc and other corrupt acts" with respect to the December 24, 2015 report – and with respect to the predecessor August 29, 2011 report of the Commission on Judicial Compensation. Both reports are flagrantly violative of the largely identical statutes pursuant to which they purport to be rendered, quite apart from being fraudulent and unconstitutional. This is why the citizen-taxpayer action, *Center for Judicial Accountability, Inc. v. Cuomo, et al.* (Albany

Co. #1788-2014), which our non-partisan, non-profit citizens' organization expressly brought on behalf of the People of the State of New York and the public interest, seeks declarations voiding the reports. As for the posture of the case, it is one of summary judgment for the plaintiffs – as can be readily verified from the lawsuit record, accessible from the homepage of CJA's website, www.judgewatch.org.¹

Last week, we gave notice of the foregoing to the district attorney beneficiaries of the December 24, 2015 and August 11, 2011 reports, stating:

...it is the duty of each district attorney, upon verifying the facts and evidence...to apprise his/her county attorney, county legislative board, and county executive officer, that he/she is disavowing the salary increases arising from those reports, and to advise them to secure a judicial declaration to void the reports, including by filing an *amicus curiae* brief in CJA's pending citizen-taxpayer action for such a declaration, *CJA v. Cuomo, et al.* (Albany Co. #1788-2014). For any district attorney to do otherwise and claim, let alone even accept, the salary increases, in face of *prima facie* proof that they are fraudulent and lawless, would make him/her complicit in the very penal law violations that are his/her duty to prosecute.

...

...should ANY of the district attorney beneficiaries of the August 29, 2011 and December 24, 2015 reports believe that [the evidence] is NOT dispositive of the duty they owe to the counties that elected them to repudiate the salary increases and to take steps to secure the voiding of the reports, they must come forward with their findings of fact and conclusions of law with respect to that evidence.” (CJA's June 29, 2016 letter, at p. 4, underlining, capitalization and italics in original).

A copy of that notice is herewith furnished to you. It consists of our July 1, 2016 letter to New York's 62 district attorneys, entitled “How Many D.A.s Does It Take to Confront Evidence & Abide by Ethical Rules?”. It transmitted to them our June 29, 2016 letter to DAASNY's president, entitled “CONFRONTING THE EVIDENCE...”, specifying and furnishing the documentary evidence substantiating the penal law violations and highlighting and furnishing the June 21, 2016 corruption complaint we had filed with Albany County District Attorney P. David Soares for enforcement of the penal law and for intervention in the *CJA v. Cuomo, et al.* citizen-taxpayer action. As detailed, this June 21, 2016 corruption complaint, pertaining to the judicial salary increases and the slush-fund legislative/judiciary budget bills embodying them, is a second supplement to the corruption complaint we had filed with District Attorney Soares on July 19, 2013 and then supplemented on January 7, 2014, both of which he has been “sitting on” and which the district attorney-stacked Commission to Investigate Public Corruption allowed him to “sit on” because, *inter alia*, of their financial interest in judicial salaries because of the statutory link to their own district attorney

¹ The lawsuit record is accessible from several of the prominent center links on CJA's homepage, most directly from the link entitled “CJA's Citizen-Taxpayer Action to End NYS' Corrupt Budget 'Process' & Unconstitutional 'Three Men in a Room' Governance”.

salaries.²

By this letter, we now give notice to you – the governments of the 56 counties whose judicially-linked district attorney salaries are paid from the county budgets: Your duty is to protect your county’s tax dollars from fraud and other illegality, not to mention from district attorneys who should be removed for corruption.

County Law §700, entitled “District attorney; powers and duties”, states:

“1. ...it shall be the duty of every district attorney to conduct all prosecutions for crimes and offenses cognizable by the courts of the county for which he or she shall have been elected or appointed; ... He or she shall perform such additional and related duties as may be prescribed by law and directed by the board of supervisors.” (underlining added).

The “crimes...cognizable by the courts” of your counties, specified by our June 29, 2016 letter (at p. 3) – and for which our June 21, 2016 corruption complaint to District Attorney Soares seeks prosecution (at pp. 2-3, 4-5) – are:

Penal Law §175.35 (“offering a false instrument for filing in the first degree”);
Penal Law §155.42 (“grand larceny in the first degree”);
Penal Law §190.65 (“scheme to defraud in the first degree”);
Penal Law §195.20 (“defrauding the government”);
Penal Law §195 (“official misconduct”);
Penal Law §105.15 (“conspiracy in the second degree”);
Penal Law §20.00 (“criminal liability for conduct of another”); and
Penal Law §496 (“corrupting the government”) – part of the “Public Trust Act”.

If your district attorneys do not, as they should, voluntarily, furnish you with their findings of fact and conclusions of law with respect to the *CJA v. Cuomo, et al.* citizen-taxpayer action and with respect to the sufficiency of our June 21, 2016 corruption complaint to District Attorney Soares, then your duty is to direct them to do so, forthwith. That way you will know, for a certainty, that your district attorneys have no grounds to sue you for salary increases based on the December 24, 2015 and August 29, 2011 reports, as they have threatened to do.³

² The notice and all its referred-to evidence are posted on CJA’s webpage for this letter, accessible via CJA’s homepage link: “NO PAY RAISES FOR NEW YORK’S CORRUPT PUBLIC OFFICERS – The Money Belongs to their Victims!”, which brings up a menu page with a link entitled “HOW MANY D.A.s DOES IT TAKE TO CONFRONT EVIDENCE & ABIDE BY ETHICAL RULES?”. The direct link to the webpage for this letter is here: <http://www.judgewatch.org/web-pages/searching-nys/budget/budget-2016-17/7-8-16-ltr-to-counties.htm>.

³ See, for example, “Legislators debate state-mandated DA raise”, Orlean Times Herald, March 29, 2016 (Bob Clark), posted on CJA’s webpage for this letter.

The evidence our notice has furnished your district attorneys, itemized at page 4 of our June 29, 2016 letter and at pages 3-4 of our June 21, 2016 corruption complaint, is *prima facie* and dispositive. It is all part of the *CJA v. Cuomo, et al.* citizen taxpayer action⁴ and the ONLY factual findings and legal conclusions your district attorneys can make with respect thereto are of fraud and unlawfulness – laying bare that they have no legal claim to enforce against you based on the December 24, 2015 report and that your obligation, if your county has already approved the district attorney salary increase, effective April 1, 2016, based on that report, is to withdraw the approval and – with the other counties – secure a judicial declaration voiding the December 24, 2015 report and the predecessor August 29, 2011 report. As your 56 county attorneys would surely advise, the most expeditious and cost-effective way to secure such judicial declarations would be by the counties intervening for that relief in the pending and summary judgment-postured *CJA v. Cuomo, et al.* citizen-taxpayer action.⁵

⁴ Even before the citizen-taxpayer action was commenced, on March 28, 2014, defendants were served with a demand to produce the dispositive documents in their possession establishing plaintiffs' entitlement therein to a TRO, preliminary injunction, and summary judgment, *to wit*, our October 27, 2011 opposition report to the Commission on Judicial Compensation's August 29, 2011 report and our March 30, 2012 verified complaint in our declaratory judgment action based thereon (*CJA v. Cuomo, et al.*, Bronx Co. #302951-2012) – both of which I had handed up to the Legislature on February 6, 2013 in testifying before it, in opposition to the judicial salary increases, at its “public protection” budget hearing (video posted on CJA's webpage for this letter). Defendants not only failed and refused to make production, but lied that such was in their possession. This is the subject of plaintiffs' *sub judice* September 22, 2015 cross-motion for summary judgment and sanctions against defendants, in support of which plaintiffs furnished the Court with full copies of both the October 27, 2011 opposition report and March 30, 2012 verified complaint. (link to September 22, 2015 cross-motion posted on CJA's webpage for this letter: see affidavit, ¶8; memorandum of law, pp. 42-44 & PHOTOS!).

⁵ Pursuant to County Law §501.1, the county attorneys are “the legal advisor(s) to the board of supervisors and every officer whose compensation is paid from county funds in all matters involving an official act of a civil nature.” They are no less qualified than the district attorneys in furnishing findings of fact and conclusions of law with regard to the *CJA v. Cuomo, et al.* citizen-taxpayer action – and this, too, the boards of supervisors and legislators are empowered to direct their county attorneys to do (County Law §501.3).

Of course, it does not take a law degree to make the relevant factual findings – and non-lawyer county board members, executive officers, and treasurers/comptrollers can make them, easily. The statutory violations of the December 24, 2015 and August 29, 2011 reports are facially evident, requiring nothing more than a comparison of the reports with the statutes. This can be accomplished within minutes, especially with the aid of CJA's own comparisons, which are part of the *CJA v. Cuomo, et al.* citizen-taxpayer action:

- As for the facial statutory violations of the December 24, 2015 report, see the March 23, 2016 verified second supplemental complaint in the *CJA v. Cuomo, et al.* citizen-taxpayer action: ¶¶453-457 (15th cause of action);
- As for the facial statutory violations of the August 29, 2011 report, see the March 30, 2012 verified complaint in the *CJA v. Cuomo, et al.* declaratory judgment action: ¶¶167-172 (4th cause of action).

I am available – and eager – to assist you and to answer such questions as you may have. This includes, under oath, subject to the penalties of perjury. Will your district attorneys do likewise – or even furnish you with the findings of fact and conclusions of law they are duty-bound to make, with or without a direction from you?

Just by doing your job, the counties can play a heroic role in restoring a constitutionally-functioning state government, ending the unrestrained public corruption chronicled by the *CJA v. Cuomo, et al.* citizen-taxpayer action. U.S. Attorney Bharara has railed against “enablers”.⁶ What is needed is one whistle-blowing county – and the starting place is one whistle-blowing county board member, county treasurer/comptroller, or county attorney, doing nothing more extraordinary than what his/her job compels: obeying his oath of office, the law, and ethical rules, including as to reporting corruption.⁷ All other counties and public officers will follow suit, if for no other reason than to avoid criminal liability, under the penal law, as accomplices and co-conspirators.

Finally, I take the opportunity to draw to your attention that our June 21, 2016 corruption complaint to District Attorney Soares was not the only enclosure to our June 29, 2016 letter. Also enclosed was our June 10, 2016 e-mail entitled “What are your positions? – beginning with repeal of the statutory link between D.A. and judicial salaries” – and it was addressed to NYSAC’s president and executive

Easy, too, for any non-lawyer to discern is the fraudulence of the December 24, 2015 and August 29, 2011 reports. All that is necessary is examining the serious and substantial nature of the citizen opposition to the judicial salary increases, such as CJA presented to the Commission on Judicial Compensation and to the Commission on Legislative, Judicial and Executive Compensation – as to which their reports make no findings of fact or conclusions of law – and whose very existence each report conceals. Such, too, can be readily accomplished from the *CJA v. Cuomo, et al.* citizen-taxpayer action:

- As for the fraudulence of the December 24, 2015 report, see the March 23, 2016 verified second supplemental complaint in the *CJA v. Cuomo, et al.* citizen-taxpayer action: ¶¶426-452 (14th cause of action);
- As for the fraudulence of the August 29, 2011 report, see the March 30, 2012 verified complaint in the *CJA v. Cuomo, et al.* declaratory judgment action: ¶¶155-166 (3rd cause of action).

⁶ See, for example: “*Critical of Corruption: Bharara Addresses WAMC Audience In Rare Audience Stop*”, WAMC Public Radio, February 8, 2016 (Ian Pinkus). Audio link posted on CJA’s webpage for this letter.

⁷ See, *inter alia*, New York’s Rules for Professional Conduct, Rule 8.3(a) “Reporting Professional Misconduct”:

“A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer’s honesty, trustworthiness or fitness as a lawyer shall report such knowledge to a tribunal or other authority empowered to investigate or act upon such violation.”

director, in addition to DAASNY's president. As I am advised that NYSAC takes its direction from the counties, won't you instruct NYSAC to respond to the questions posed by the June 10, 2016 e-mail so that your organizational voice may be heard with respect thereto. This, over and beyond your responding on your own behalf.

Our June 29, 2016 letter also included a third enclosure: our November 13, 2013 letter to District Attorney Soares, entitled "What are Your Procedures for Handling Public Corruption Complaints? – & Other Questions that an Unconflicted Commission to Investigate Public Corruption Would Ask". Here, too, won't you direct your district attorneys to answer its enumerated questions, if they do not do so voluntarily, as they rightfully should. And won't you add a further question to the list – one certainly germane to the situation at bar:

What are your procedures for handling public corruption complaints, filed with your district attorney offices, where you have financial and other conflicts of interest?

The courtesy of your responses by July 30, 2016 would be greatly appreciated.

Thank you.

cc: The 5 counties of the City of New York
New York State's least populous Hamilton County, with the only part-time district attorney
New York State Association of Counties (NYSAC)
New York State's 62 district attorneys – & their district attorneys' association (DAASNY)
Senate & Assembly leadership, including committee chairs & ranking members, etc.
New York State Law Revision Commission
U.S. Attorney for the Southern District of New York Preet Bharara
U.S. Attorney for the Northern District of New York Richard Hartunian